

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

v.

DAVID GRAHAM

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Criminal No. 05-20 Erie

ORDER

Presently before the Court is the motion of Defendant David Graham to compel discovery of computer materials, specifically the hard drive seized from the Defendant in this case. After careful consideration of the briefs filed in support of and in opposition to the Motion to Compel Discovery, the Court recognizes the tension between the Defendant's right to discovery pursuant to Federal Rule of Criminal Procedure 16 and the contraband nature of the material. See United States v. Kimbrough, 69 F.3d 723, 731 (5th Cir. 1995); United States v. Horn, 187 F.3d 781, 792 (8th Cir. 1999); United States v. Husband, 246 F. Supp. 2d 467 (E.D. Va. 2003). Consequently, it is hereby ORDERED as follows:

1. Defendant's motion to compel [Doc. No. 18] is denied.
2. The government shall make reasonable accommodations that will permit defense counsel and defense counsel's expert to review in privacy copies of the Defendant's hard drive or other computer storage media that contain or may contain illegal child pornography at the offices of the FBI or U.S. Attorney's office.
3. Defense counsel and his expert shall provide to the FBI, at least seven business days prior to the date when they will begin to review the information seized from the computers of the Defendant, blank hard drives and other storage media, as necessary. The FBI will use this blank media to produce a copy for the defense. Defense counsel and his expert may then conduct their investigation by reviewing these copies at the offices of the FBI.

4. No images of child pornography may be copied by the defense or removed in any manner from the offices of the FBI by defense counsel or the defense expert.

5. The government shall not make any attempt to trace, reproduce or reconstruct the computer activities of defense counsel or his expert while conducting their investigation using FBI equipment.

AND NOW, this 19th day of September, 2005, IT IS SO ORDERED.

/s/ Sean J. McLaughlin
United States District Judge

cm: All counsel of record. _____